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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/964,298 | 09/26/2001 | Rodrigo Jimenez | J3553(C) | 9910 |

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

NGO, LIEN M

| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/964,298

Applicant(s)

JIMENEZ ET AL.

Examiner

LIEN TM NGO

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because terms "The invention is directed to" should be deleted, and "a protective ..." should be – A protective ...---. Correction is required. See MPEP § 608.01(b).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cross section symbolic of plastic of the moulded sheath as set forth in the claims and the slit at the bottom of each side of the cap (claim 5) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. (see attachment of example for cross section symbolic of plastic)

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the cross section symbolic of plastic of the moulded sheath as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to

avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is not understandable that how the projection lugs are able to reversible slot into slits at the bottom of the cap side.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is confusing whether "frictional interactions" in claim 3, and "an internal projection" in claim 4 are recitations for "a means for releasably holding" in claim 1; and "two opposed projections" in claim 5 a recitation for "an internal projection" in claim 5.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
Claims 1, 2, 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Beal (601,117). Beal discloses, in fig. 1 and 2, a package product comprising a container 2 and a cover sheath 5, the sheath being closed at the top and open at the bottom, a means 8 for releasably holding the container, cutaway sections in opposite sides that enable the container to be grasped between a finger and thumb and pulled form the sheath.

Beal does not disclose the sheath being plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Beal cover sheath from plastic in order to reduce cost because plastic is cheaper than metal, and moreover, plastic is easy to work and forms a better seal, also, since it has been held to be within the generally skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Ileshin, 125 USPQ 416.

In regard to claim 2, the Beal sheath comprised concave portion 7 on the outer surface therefor they provide a higher coefficient of friction than the outer surface of the bottle.

9. Claims 1-4, 6-8, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farricielli (Des. 327,431) in view of Beal.

Farricielli discloses, in fig. 1 and 3, a package product comprising a container and a cover sheath, the sheath being closed at the top and open at the bottom, a means (protrusions see in fig. 5) for releasably holding the container, cutaway sections in opposite sides that enable the container to be grasped between a finger and thumb and pulled from the sheath.

Farricielli does not disclose the sheath being plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli cover sheath from plastic, in order to make a cover sheath with a cheap material, and moreover, plastic is easy to work and forms a better seal, also, since it has been held to be within the generally skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Ileshin, 125 USPQ 416.

Farricielli does not disclose the container having a cap.

Beal teaches a container having a cap which is covered by a sheath. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Farricielli container having a cap, as taught by Beal, in order to seal the container.

In regard to claim 2, the Farricielli sheath comprised ribs on the outer surface therefor they provide a higher coefficient of friction than the outer surface of the bottle.

In regard to claims 3 and 4, Farricielli sheath in figs. 1 and 2 can hold the container firmly by frictional interactions between the container and the sheath, and comprising an internal projection.

In regard to claim 6, it would be obvious to make the Farricielli sheath being asymmetric shape to correspond a asymmetric shape of the container, since such modification would have involves a mere change in the shape of a component. A change in size, shape, dimension, etc. is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

In regard to claim 10, Farricielli in view of Beal discloses the invention comprising limitations as claimed; therefore, the Farricielli invention is capable of performing the method as claimed.

Response to Arguments

10. Applicant's arguments with respect to claims 1-8 and 10 have been considered but are moot in view of the new ground(s) of rejection.


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 703-305-0294. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LEE YOUNG can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Lien Ngo

August 27, 2203



LEE YOUNG
SUPERVISORY PATENT EXAMINEE
TECHNOLOGY CENTER 3700

